

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 15, 2005

Division: County Attorney

Bulk Item: Yes XX No

Staff Contact Person: Bob Shillinger

AGENDA ITEM WORDING: Approval of settlement agreement in "*Department of Community Affairs v. Monroe County and DC6, L.L.C.*", DOAH Case No. 03-4852.

ITEM BACKGROUND:

The Department of Community Affairs filed an appeal of a building permit issued by Monroe County to the property owner. This settlement agreement amicably resolves the issues between the Department of Community Affairs, the property owner and Monroe County.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: _____

BUDGETED: Yes ____ No ____

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ____ No ____ **AMOUNT PER MONTH** ____ **Year** ____

APPROVED BY: County Atty XX OMB/Purchasing ____ Risk Management ____

DIVISION DIRECTOR APPROVAL:


JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included XX Not Required ____

DISPOSITION: _____

AGENDA ITEM # _____

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

v.

DOAH CASE NO. 03-4852

MONROE COUNTY,

Respondent,

and

DC6, L.L.C.,

Intervenor.

_____ /

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the Petitioner DEPARTMENT OF COMMUNITY AFFAIRS (herein "the Department"), and Respondent MONROE COUNTY and Intervenor DC6, L.L.C., as a complete and final settlement of all claims raised in the above-styled proceeding.

WITNESSETH:

WHEREAS, the Department of Community Affairs is the state land planning agency with the duty and responsibility of administering and enforcing the provisions of Chapter 380, Florida Statutes, and the rules and regulations promulgated thereunder, which include the Monroe County Comprehensive Plan and Land Development Regulations; and

WHEREAS, Intervenor is the successor in interest to Nancy Suarez-Cannon and in September 2003 purchased the real property known as Lots 5, 6, and 7, Block 14,

Bowen's Addition To Rivera Village Subdivision in Section 12, Township 61 South, Range 39 East, Key Largo, (herein "the subject property"); and the rights to the building permit that form the basis of appeal by the Department, and

WHEREAS, the subject properties are located within the Florida Keys Area of Critical State Concern as designated by Section 380.0552, Florida Statutes; and

WHEREAS, on August 8, 2003 the Monroe County Building Department ("the Building Department") approved Nancy Suarez-Cannon's application for the construction of a single-family home on her property through the issuance of Building Permit No. 020302483; and

WHEREAS, the Department timely appealed the building permit to the Florida Land and Water Adjudicatory Commission pursuant to Section 380.07, Florida Statutes; and

WHEREAS, the parties desire to amicably resolve all issues relating to the construction of the single-family home without further expense or delay, and the parties having determined that is in their best interest to do so; and

WHEREAS, the Department finds that this agreement is in the best interest of the State and will effectuate the purposes of Chapter 380, Florida Statutes.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above recitals are incorporated herein and form a material part hereof.
2. **Open Space Required.** The parties agree that Intervenor DC6, L.L.C., successor in interest to Nancy Suarez-Cannon, shall commence the development of a single-family residence on the subject property as authorized by Building Permit No. 020302483 subject to the following stipulated conditions: The Parties agree that development of the subject property shall incorporate a sixty (60) percent open space requirement on the approximate .48 acre parcel (20,909 square feet) consistent with the Monroe County requirement for land identified as a High Hammock (moderate quality). The sixty (60) percent open space requirement shall result in the preservation of approximately 12,545 square feet of undeveloped land dedicated to open space and placed in a Conservation Easement of undisturbed hammock that must be submitted and approved by Monroe County prior to issuance of a Certificate of Occupancy. The Conservation Easement shall be dedicated to Monroe County and shall run with the land in perpetuity. Within thirty (30) days of the completion of construction of the single-family home and prior to the Certificate of Occupancy being issued, Intervenor shall submit to the Department a copy of the recorded Conservation Easement.
3. **Lot Aggregation.** Within a twelve (12) month period commencing on the effective Date of Agreement of the Settlement Agreement, the Parties agree to consider in a separate proceeding a future request to aggregate the development rights of the Subject Property to a contiguous property currently known as the Coolidge Key Property only in the event the Intervenor obtains title to the

contiguous Coolidge Key Property and made substantial progress in reaching a mutually agreeable resolution of the Monroe County Code enforcement issues identified in Case Nos. CE03090216, and CE03110249 involving the Coolidge Key Property. All future requests to aggregate the development rights of the Subject Property with contiguous property shall be consistent with applicable Monroe County Comprehensive Plan and Land Development regulations in effect at the time of the request.

4. **Notice of Dismissal.** Within five (5) days after the execution of this Agreement by both parties, the Department shall file a Notice of Voluntary Dismissal of this Appeal.
5. **Caveat.** The parties acknowledge their disagreement over whether the building permit for the Subject Property is consistent with the Monroe County Comprehensive Plan and Land Development Regulation and have entered this Agreement solely in the spirit of compromise. This Agreement shall not be deemed to constitute a waiver of any party's position with regard to the proper interpretation and application of the Monroe County Comprehensive Plan and Land Development Regulations, and shall not be given precedential effect with regard to any other permit issued by Monroe County.
6. **Scope of Authority.** This Agreement affects the rights and obligations of the parties under the provisions of Chapter 380, Florida Statutes, related to Areas of Critical State Concern. It is not intended to influence or determine the authority or decisions of any other state or federal government or agency in issuance of any

other permits or approvals that might be required by federal or state law for any development authorized by this Agreement.

7. **Duplicate Originals.** This Agreement may be executed in any number of originals, all of which evidence one Agreement, and only one of which need be produced for any purpose.
8. **Binding Effect.** This Agreement is intended to and shall be binding on the parties, their representatives, heirs, successors and assigns.
9. **Release; Costs and Attorney's Fees.** The parties hereto forever release each other party from any and all claims of whatever nature which arise or may arise out of the issuance or appeal of the building permit identified in this Agreement. Each party shall bear its own attorney's fees and costs incurred in these proceedings.
10. **Entirety of Agreement.** This Agreement constitutes the entire agreement of the parties. This Agreement may be modified or amended only by a separate writing entered into between the parties.
11. **Enforcement.** This Agreement may be enforced by either party as provided in Chapter 380, Florida Statutes, or as otherwise provided by law.
12. **Drafting of Agreement.** The parties shall be deemed to have participated generally in the drafting of this Agreement. Accordingly, this Agreement shall be construed neutrally without regard to the party responsible for its preparation, and any terms, conditions, uncertainty, or ambiguity shall not be construed against any of the parties as a result of the drafting of such.

13. **Date of Agreement.** The date of this Agreement is the date the last party signs this Agreement.

(rest of page intentionally left blank)

IN WITNESS THEREOF, the parties, or by their duly authorized representatives, have executed this Agreement on the dates and year below written.

Witness

David Clark
DC6, L.L.C.

(Print Name of Witness)

Dated: _____

Witness

(Print Name of Witness)

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by David Clark, who is personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Public- State of Florida

[stamp]

(Print Name of Notary Public)

IN WITNESS THEREOF, the parties, or by their duly authorized representatives, have executed this Agreement on the dates and year below written.

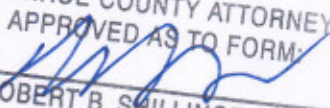
ATTEST:
DANNY L. KOLHAGE
CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY

By: _____
Deputy Clerk

By: _____
Dixie Spehar, Mayor

Dated _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT B. SHILLINGER, JR.
ASSISTANT COUNTY ATTORNEY
Date 6-10-5

Witness

DEPT. OF COMMUNITY AFFAIRS,
STATE OF FLORIDA

(Print Name of Witness)

By: _____
Valerie J. Hubbard, Director
Division of Community Planning

Witness

(Print Name of Witness)

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Valerie J. Hubbard as Director of Division of Community Planning on behalf of the Department of Community Affairs, State of Florida, who is personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Public- State of Florida

[stamp]

(Print Name of Notary Public)